

UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

CIVIL MINUTES--GENERAL

Case No. CV 01-00041 CBM

Date: November 27, 2007

Title: J.C., et al. v. Camacho, et al.

=====

DOCKET ENTRY

ORDER: **APPROVING the Parties' Stipulation Dated August 31, 2007**

=====

PRESENT: Honorable CONSUELO B. MARSHALL, UNITED STATES DISTRICT JUDGE

Virginia T. Kilgore

N/A

Deputy Clerk

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

N/A

N/A

PROCEEDINGS:

The matter before the Court is the parties' August 31, 2007 Stipulation to modify the Amended Permanent Injunction ("Amended PI"), August 15, 2005 Order and December 2, 2005 Stipulation and request for approval of court monitors. Having considered the arguments presented at the October 9, 2007 hearing, and in the parties' supplemental briefs, the court hereby APPROVES the Stipulation to modify and APPROVES the appointment of Mr. James Casey and James Kiffer, Ph.D. to serve jointly as court monitors in this case.

The Court is persuaded that approving each party's selection of one monitor in whom they have expressed confidence will enable the parties to finally resolve this matter to the benefit of the community. The Court further finds that the appointment of Guam-based monitors, who have ready access to the subject facilities and personnel, will be more efficient and less costly than appointment of off-island monitors.

The Court has considered Defendants' arguments regarding Mr. Casey's qualifications and concludes that there is no conflict because Mr. Casey will be serving as a monitor for the Court and will not be representing "another **person** in the same or a substantially related matter." *See* Guam Rules of Professional Conduct, Rule 1.9(a) (emphasis supplied). Further, both Defense counsel and the Public Guardian on Guam (who serves as the legal guardian for two named plaintiffs and 27 similarly situated individuals) have recommended Mr. Casey's appointment as Court Monitor. *See id.* (providing former client may give informed consent to subsequent adverse representation). Finally, in his role as court monitor, Mr. Casey will be responsible for accurately reporting to the Court on Defendants' compliance with the Amended PI. Because it is in Plaintiffs' interest to ensure Defendants' compliance with the Amended PI, the Court does not anticipate that Mr. Casey will be required to take any position that is "materially adverse to the interests of the former client." *Id.* In the unlikely event an actual conflict should arise, the parties and/or monitors shall promptly notify the Court.

The Court further finds that the court monitors will be more effective if they are provided with a comprehensive and sufficiently detailed list of milestones on which to report. Plaintiffs have expressed dissatisfaction with Defendants' proposed List of Measurable Milestones as too "vague and conclusory" to benefit either the Monitors or the Court. The Court therefore ORDERS the parties to meet and confer regarding appropriate amendments and/or additions to the List of Measurable Milestones. An Amended List of Measurable Milestones shall be filed with the Court on or before December 14, 2007. To the extent the parties cannot agree on a complete list of milestones, the Amended List of Measurable Milestones shall contain those milestones upon which they do agree, and the parties shall separately file any additional proposed milestones for the Court's consideration.

Pursuant to the parties' Stipulation, the court monitors are to submit monthly written reports to the Court. The Court ORDERS the monitors to file these reports on or before the first day of each month, unless first day falls on a Saturday, Sunday or legal holiday, in which case the monthly report may be filed the following business day. The monitors' first report shall be filed on or before January 2, 2008. The Court ORDERS the parties to appear for a status conference on Friday, March 14, 2008 at 10:00 a.m. at which time the Court will assess the effectiveness of the court monitor appointments and Defendants' progress in implementing the Amended PI. The Court reserves the right to remove or replace the appointed monitors in the event it deems such action necessary or appropriate.

IT IS SO ORDERED.

Initials of Deputy Clerk: /s/ VTK
cc: Judge Marshall
Parties of Record